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Patent
Docket No. 393032045000

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Takashi IKEDA et al.

Serial No.: 10/829,310

Filing Date: April 20, 2004

For: MUSIC-CONTENT USING APPARATUS CAPABLE OF MANAGING COPYING OF MUSIC CONTENT, AND PROGRAM THEREFOR

Examiner: J. Murdough

Group Art Unit: 3621

TRANSMITTAL LETTER

MS Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Dear Sir:

With reference to the subject application, enclosed is a copy of an office action dated June 13, 2008, referencing corresponding European Application No. 04101520.7. Please make this document of record in the present application.

If the Patent and Trademark Office determines that an extension and/or other relief (such as payment of a fee under 37 C.F.R. § 1.17 (p)) is required, Applicants petition for any required relief including extensions of time and authorize the Commissioner to charge the cost of such

petition and/or other fees due in connection with the filing of this document to **Deposit Account No. 03-1952** referencing 393032045000.

Dated: August 12, 2008

Respectfully submitted,

By _____
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Approved for use through 08/31/2008. OMB 0651-0031
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Application No. (if known): 10/829/310 Attorney Docket No.: 393032045000

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Transmittal Letter (1 page)
Copy of Euroepean Office Action dated June 13, 2008

LA-990735

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Reference	Application No./Patent No.
1430/52-EP	04101520.7 - 2212

Applicant/Proprietor
YAMAHA CORPORATION

Summons to attend oral proceedings pursuant to Rule 115(1) EPC

You are hereby summoned to attend oral proceedings arranged in connection with the above-mentioned European patent application.

The matters to be discussed are set out in the communication accompanying this summons (EPO Form 2906).

The oral proceedings, which will not be public, will take place before the Examining Division.

on 04.12.08 at 09.00 hrs at the EPO,
PschorrHöfe, Bayerstr. 34, D-80335 München

No changes to the date of the oral proceedings can be made, except on serious grounds (see OJ EPO 10/2000, 456).
If you do not appear as summoned, the oral proceedings may continue without you (R. 115(2) EPC).
Your attention is drawn to Rule 4 EPC, regarding the language of the oral proceedings, and to the OJ EPO 9/1991, 489, concerning the filing of authorisations for company employees and lawyers acting as representatives before the EPO.

The final date for making written submissions and/or amendments (R. 116 EPC), is 04.11.08.

The actual room number as well as the waiting room numbers will be given to you by the porter in the foyer at the above EPO address.

Parking is available free of charge in the underground car park. However, this applies only in the case of accessing the car park via the entrance "Zollstrasse".

1st Examiner:	2nd Member:	Chairman:
Kerschbaumer J	Mezödi S	Bichler M

For the Examining Division

Europäisches Patentamt · European Patent Office · Office européen des brevets

Koski, Pilvi

Annexes:
Confirmation of receipt (Form 2936)
Communication (EPO Form 2906)

The examination is being carried out on the **following application documents:**

Description, Pages

1-23 as originally filed

Claims, Numbers

1-9 received on 09.01.2008 with letter of 05.01.2008

Drawings, Sheets

1/3-3/3 as originally filed

1 The following documents are referred to in this communication; the numbering will be adhered to in the rest of the procedure:

D1: WO 97/14087 A (ERICKSON, JOHN, S) 17 April 1997 (1997-04-17)
D2: WO 01/69354 A (MICROSOFT CORPORATION) 20 September 2001

2 The present application does not meet the requirements of Article 52(1) EPC, because the subject-matter of independent claim 1 does not involve an inventive step in the sense of Article 56 EPC.

2.1 Document D1 is regarded as being the closest prior art source to the subject-matter of claim 1. This document shows the following features thereof:

Claim 1	**Document D1**
A music-content using apparatus	"METHODS FOR MANAGING DIGITAL CREATIVE WORKS" title
acquisition means for **acquiring** original music content;	"provide tools to **acquire**... multimedia objects" page 5 lines 5-7
replicated content generation means for **generating first-generation-replicated music content on the basis of replication of the original music** content acquired via said acquisition means	"licensing of the media to creators of **derivative works**, i.e., those who modify an original work" page 23 lines 13-26

additional information generation means for, when said replicated content generation means generates the first-generation-replicated music content, generating additional. information including **information indicating that the generated** first-generation-replicated **music content is based on replication and replication source information identifying a replicated-from source of the** first-generation-replicated **content,** wherein the generated additional information is added to the first-generation-replicated music content generated by said replicated content generation means	"methods for **attaching copyright notices** and other attributes to digital creative works... locating source works of derivative authors of digital creative works, ... determining the source and attributes of digitally creative works" page 5 lines 13-23 "The CONTAINER in this aspect preferably includes a **sourceworks extension module which records the original and derivative authorship of the media**. By retaining such information, a copyright "family tree" or electronic bibliographic record is maintained for the media. Preferably, the authorship information in the sourceworks extensions is resident as a data element within the CONTAINER. " page 23 lines 13-26
a **storage medium** (10) for storing music content	"a Digital Creative Work includes any electronic form ... stored within computer memory or other electronic memory, (2) resident on CD-ROM and/or **magnetic disk** or tape," page 7 lines 1-4

write means for writing, into said storage medium (10), music content including at least the original music content acquired by said acquisition means,	"a Digital Creative Work includes ... (3) transmitted as a digital file through ... Internet" page 7 lines 1-9 Remark: A file send via internet to a user is written onto the users magnetic disk (HD).
~~search means for, when the first-generation-replicated music content is to be used, searching for the acquired original music content on the basis of the replication source information included in the additional information; and~~	
~~use means for permitting use of the first-generation-replicated music content only when the original music content has been successfully found by said search means.~~	

~~wherein said replicated content generation means generates second—generation—replicated music content on the basis of replication of the first—generation—replicated music content, wherein when said replicated content generation means generates the second—generation—replicated music content, said additional information generation means generates the additional information corresponding to the second—generation—replicated music content and including the replication source information identifying a replicated—from source of the second—generation—replicated music content, wherein when the second—generation—replicated music content is to be used, said search means searches said storage medium (10) for the replicated—from source of the second—generation—replicated music content, and wherein when the second—generation—replicated music content is to be used, said use means permits use of the second—generation—replicated music content only when said search means identifies the original music content on the basis of the replicated—from source of the second—generation—replicated music content.~~	

2.2 The subject-matter of independent claim 1 differs from D1 in that the apparatus comprises:

a) search means for, when the first-generation-replicated music content is to be

used, searching for the acquired original music content on the basis of the replication source information included in the additional information; and

b) use means for permitting use of the first-generation-replicated music content only when the original music content has been successfully found by said search means.

c) wherein said replicated content generation means generates second—generation—replicated music content on the **basis of replication of the first—generation—replicated music content**,

wherein when said replicated content generation means generates the second—generation—replicated music content, said additional information generation means generates the **additional information** corresponding to the second—generation—replicated music content and **including the replication source information identifying a replicated—from source** of the second—generation—replicated music content,

wherein when the second—generation—replicated music content is to be used, said search means searches said storage medium (10) for the replicated—from source of the

second—generation—replicated music content, and wherein when the second—generation—replicated music content is to be used, said use means permits use of the second—generation—replicated music content only when said search means identifies the original music content on the basis of the replicated—from source of the second—generation—replicated music content.

2.3 This features lead to the effect of allowing replicated content to be used only by authorised users.

2.4 The problem to be solved by this features may be regarded as how to prevent usage of an illegal copy.

The definition that a copy of a file is illegal is a pure business concept and has no technical meaning.

2.5 The concept of "check original before using copy" is one of many well known alternatives used in DRM to prevent distribution of protected content, see e.g. document D2 describing as prior art on page 1 line 24 to page 2 line 2:

> "Various DRM techniques have been developed and employed in an attempt to thwart potential software pirates from illegally copying or otherwise distributing the digital goods to others. For example, one DRM technique includes **requiring the consumer to insert the original CD-ROM** or DVD-ROM for **verification prior to enabling the operation of a related copy** of the digital good"

There is no inventive activity involved in choosing this known technique.

2.6 The differentiating feature c) is a simple repeating of all the steps performed by the apparatus, with the only difference that "the **basis of replication of the first—generation—replicated music content**" is used to generate the second—generation—replicated music content instead of the "original" content.

According to the description page 19 lines 5-7 "then only the replicated-from replicated content may be recorded as the replicated-from source". According to this way of implementing the apparatus, there is technically no difference between a first- or second-generation content, because technically both have stored the same replicated-from source (the "original"), and therefore step S16 of Fig.4 is exactly the same for all replicated content, no matter what generation. With no technical difference when repeating the steps performed by the apparatus, there can not be any inventive step involved.

The reasoning of point 2.5 regarding D2 therefore applies also to every further generation of content.

3 The definition of "original content" is just an abstract concept defined by a business person. For a computer copying a file normally means a one-to-one copy and therefore it simply results in two originals. If one of the two files is modified, this are simply two files, but there is no dependency between the two files. The definition "file two is only allowed to be used in connection with file one" or even a recursive definition "the generation-two-file only works with generation-one and generation-

zero-file (original)" is therefore given to the person skilled in the art and he would implement this business-concepts without involving an inventive activity.

4 Even if the claim would be amended to claim the alternative described in the description on page 19 line 7-8 "alternatively, the original content may be identified by sequentially referring to the management data" would not make claim 1 inventive, because pointers are a fundamental widely used computer-concept. File systems work like this (pointer to the TOC, there is a pointer to the beginning of the file, then a pointer to the next part, thereby sequentially defining the location of files on a harddisk), the programming language C uses pointers to pointers, and so on.

No inventive activity can be seen in sequentially referring to information via pointers.

5 Furthermore, seen from a perspective from the law-requirements regarding artistic work, an artistic work-1 of artist A modified by an artist B to result in a new artistic work-2 when used by artist C to create a artistic work-3 has to give credit to all the other artists A and B involved in the creation of the artistic content. Therefore the person skilled in the art would receive the law-requirements and implement it in the framework of D1 without involving an inventive step, thereby arriving at all the features of claim 1.

6 The applicant argued in his letter dated 30.12.06 on page 2 that the need "to enter into licensing agreements by communication data with a server..." is differentiating D1 from claim 1.

This argument can not be followed, because D1 describes on page 23 lines 9-11 "Once licensed, the licensee can utilize the media in accord with an auxiliary permission data set". Therefore the "licensing" and the "using" are two different steps in D1, like the "acquisition means" and the "replicated content generation means" in claim 1. Claim 1 does not exclude that the user has to buy a license from a server for the original content before creating the replicated content.

An additional step of the prior art can not make claim 1 inventive.

7 The applicant argued in his letter dated 5.1.08 on page 3 last par. that "Consequently, in order to use the second-generation-replicated music content, the replicated-from source of the second-generation-replicated music content becomes necessary"

This argument does not make a difference over D2, because D2 describes exactly that scenario (see above).

8 The independent claim 9 defines the program corresponding to the apparatus of claim 1. Therefore the same objection as above applies correspondingly to this claim.

9 The additional features of the dependent claims appear to be either known from the documents cited above or usually applied methods in the field of DRM and, consequently, do not lead to an inventive subject matter in the sense of Article 56 EPC.

9.1 The claimed editing and changing at least some of substance data is already described in D1 page 23 par. 3 "the invention provides for the licensing of the media to creators of **derivative works, i.e., those who modify an original work** of authorship and who obtain authorization to do so through an augmentation in the permissions data set"

10 In order to avoid the costs associated with oral proceedings (Guidelines E-III, 4), the applicant is informed of the possibility to request a decision according to the state of the file, such a decision being open to appeal (Article 113(1) and Rule 111(2) EPC; Guidelines C-VI 4.5 and E-X 4.4). The request must be submitted in writing and may not contain any further amendments or arguments. Should the applicant file further amendments or arguments then oral proceedings will take place, even in the absence of the applicant (Rule 115(2) EPC).

11 The applicant is reminded that further amendments, whether or not these are filed in due time with respect to the date for final submissions pursuant to Rule 116(1) EPC, are only allowable with the consent of the examining division (Rule 137(3) EPC. The examining division will consider applying its discretion under Rule 137(3) EPC if one

or more of the following situations applies:

- Earlier objections are not prima facie overcome.

- There is an unnecessary proliferation of auxiliary requests.

- The requests do not converge towards patentable subject-matter.

- The requests are such that, were they to be admitted, they could not be refused during oral proceedings without infringing Article 113(1) EPC due to the absence of the applicant at the oral proceedings.

- After the date for final submissions pursuant to Rule 116(1) EPC, features are unexpectedly introduced from the description, and these features do not link with the original set of claims in an obvious manner so as to form a single general inventive concept. Independently of an arguable compliance with Rule 137(4) EPC such amendments may imply that the procedure must be continued in writing in order to reveal pertinent prior art, and may thus imply a procedural delay which could otherwise have been avoided, had the requests been filed in due time.